

Yakima Billboard Moratorium

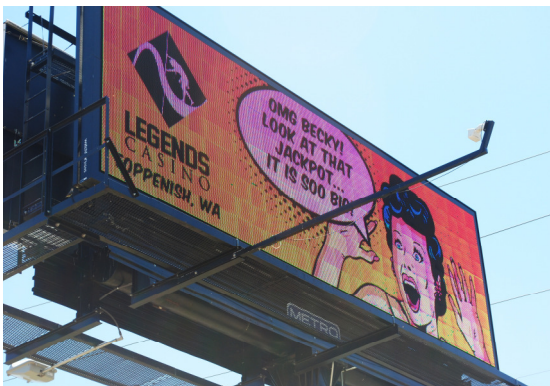
First Report to Yakima City Council

September 9, 2013

Background:

On April 2, 2013, the City of Yakima imposed a moratorium on the installation of any new off-premise signs and any digital signs 72 square feet or larger. This has more commonly been referred to as a billboard moratorium because it was the common billboard - digitized or otherwise - that the moratorium was intended to address. The moratorium was the result of a discussion city staff had with the Council over Yakima's built environment. Staff shared with Council a PowerPoint presentation on both the positive aspects of Yakima's built environment and the areas where the City has experience significant decline in both the visual and socio-economic quality of its commercial districts and neighborhoods. The presentation identified those features that contributed to the visual disarray and negative images of the City's major entry corridors, including Nob Hill Boulevard and North First Street. Billboards were cited as one of the more visually obtrusive features in these areas that could severely hamper the City's ability to revitalize neighborhoods.

And based upon the content of billboard ads, it was noted that they provided questionable benefit to the City of Yakima. Many were found to promote products or services that conveyed a negative image of the City, such as criminal wanted postings, "jail sucks" bail bonding services, and alcohol products at city entrances and in low income neighborhoods. Others were found to advertize services not located in the city of Yakima, such as a casino in Toppenish, a business in Ellensburg, and a ski resort in Canada.



Finally, it was shown that the physical condition of the billboards were often tattered and run down, contributing to a blighted image of Yakima's highly visual entry corridors.



The purpose of this report therefore is to provide additional information to the Yakima City Council that will serve as a basis for further discussion and policy development on this topic. Specifically, this report:

- a. Provides an inventory of existing billboards in Yakima, including their location and the content of their ads in terms local or non-local promotions.
- b. Describes the debate over billboard effects on economic development and revitalization efforts.
- c. Provides information on the affect of billboards on property values and local economies.
- d. Addresses the issue of traffic safety as it relates to billboards.
- e. Provides information on how other jurisdictions both regionally and nationally have chosen to regulate billboards.
- f. Describes how the billboard industry has affected policy on this topic at the local, state and national level, and the tactics the City of Yakima can expect the industry to take to affect any changes in local regulations of billboards.

A Comparison of Yakima Billboard Policies

At a local level, regulation of billboards should reflect city policy and align with Council objectives and strategies. The City Council has adopted policies with a strong focus on improving the built environment, cleaning up entry corridors, and improving the image of the City. It is therefore appropriate to consider how billboards contribute to or detract from the visual qualities of the city.

The City of Yakima is known for its pro-business policies, its economic growth focus, and its concern for individual property rights. In that regard, Yakima is not unlike other eastern Washington cities that lean toward more conservative policies on land use regulations. It is therefore significant that the cities of Union Gap, Kennewick, Pasco, Richland, Wenatchee, Spokane, Spokane Valley, Walla Walla, Wenatchee and Moses Lake, have chosen to ban new billboards in their communities. At first glance, this seems

contradictory to the conservative policies of eastern Washington. But a closer look reveals that this is not always a partisan issue. Many cities find that amenity provides a competitive edge in their economic development strategies. Even traditionally conservative cities like Houston and Salt Lake City (discussed below) believe that billboards impose significant liabilities to their development objectives. Other large cities banning new billboards include Seattle, Denver, Durham, San Diego, Little Rock, Raleigh, Durham, Jacksonville, and Kansas City. At a much broader level, Vermont, Alaska, Hawaii, and Maine have imposed statewide bans on billboards, finding that the aesthetic character of their landscape drives their state economies.

Not surprisingly, the billboard industry argues against such hard line policies, insisting that its product is essential for economic success and that it promotes community interests. A common industry claim is that (a) over 70% of billboard advertisers are local businesses; and (b) the billboard industry donates \$400 million in public service advertising each year.¹ Billboard opponents argue the opposite, claiming that billboards more commonly advertise national brands or out-of-state products, that most billboards are located in low-income, minority neighborhoods, and that billboards within those neighborhoods heavily advertise alcohol and other addictive products.

Yakima Billboard Inventory

It is therefore helpful to consider where billboards are located in Yakima and what products they actually do promote. An inventory conducted in the summer of 2013 found 119 billboards located within city limits on 69 structures. 84% of billboards in Yakima lie east of 16th Street in the cities lower income neighborhoods. 16% lie west of 16th Street, but 55% of those lie along Fruitvale Avenue, which is another area characterized by low income neighborhoods. (See attached map in Appendix “A”)

The following table shows the content of Yakima billboard ads by category²:

Billboard Inventory in Yakima (as of July 2013)

Category	Number of ads	Percent of total adds
Local Business ³	47	30%
Non-Local Business ⁴	106	68%
Public Service ⁵	9	6%
Addictive Products ⁶	39	25%

¹ The Sign of The Times.org, FAQ's, Los Angeles Billboards, Q: What is the Impact of billboards on the economy?", & Q: "What do billboard companies do to help the community?"

² Figures on the number of ads by category takes into account digital and tri-fold billboards that display multiple ads on single billboards.

³ Includes specific local businesses with city address; does not include ads for products sold by local businesses.

⁴ Includes businesses, corporations and organizations headquartered outside city limits.

⁵ Includes ads for social service, public awareness, "crimestopper", fire prevention, etc.

⁶ Includes alcohol products and gambling facilities.

Aesthetics & Public Opinion of Billboards

The industry makes few claims that billboards are intended to be attractive. Their principle purpose is to be dominantly visible to a large number of people. One commenter on the usefulness of billboard advertizing noted, “One of the advantages to having a billboard over a newspaper or magazine advertisement is that people cannot turn the page or throw out your billboard message. A radio or television advertisement can be turned off or ignored, where a billboard is constantly on and in areas where people are going to see it.”⁷

Such advantages to advertisers are the windfall of public monies that paid for the roads from which billboards are viewed. (A billboard has no value unless it is seen from public ways). The question is whether the public is fairly compensated for subsidizing billboard advertising and whether any costs or benefits accrue to the public. It is difficult to quantify the aesthetic costs or benefits of billboards because it requires that a value be placed upon such things as a view of the landscape, or a view of a cityscape. But even the courts have not been shy about the aesthetic impacts billboards. In the landmark case *Metromedia v. the City of San Diego*, the court declared, “It is not speculative to recognize that billboards by their very nature, wherever located and however construed, can be perceived as an aesthetic harm”.⁸

Surveys have been conducted to access public opinion on billboards with seemingly conflicting results. But the conflicts appear to be based on the types of questions asked and on who is conducting the survey. Some are conducted by “hired guns” of advocacy groups, while others are conducted by local jurisdictions trying to assess local opinion. Clearly, the Billboard industry likes to cite survey results that champion their cause. For example, an article published on the web by Vegas LED Screens – maker of digital billboard signs – states:

“An August poll found that 80 percent of U.S. adults believe digital billboards are useful to drivers in giving them important information, and nearly the same proportion disagree with attempts to ban billboards. The American public overwhelmingly supports digital billboards despite many municipalities’ attempts to ban them, according to new research commissioned by the Outdoor Advertising Association of America (OAAA).”

Conversely, Scenic America, one of the strongest advocacy groups opposing billboards insists that public opinion polls finding that people actually like billboards are a myth, stating:

“Actually, the opposite is true. Reputable public opinion polls find that most Americans think billboards are ugly, intrusive, and uninformative. Not one reputable survey shows that people like billboards.

⁷ Arnold Anderson, eHow Contributor, www.eHow.com; “The Advantages of Advertizing on Billboards”,

⁸ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 510 (1981) (Hite, J.).

- “• By a 10 to 1 margin, Floridians favor reducing the number of billboards “Survey on Outdoor Advertising.” 1995.
- More than two-thirds of New Hampshire residents oppose billboards on highways “Public Attitudes Toward Billboards in New Hampshire.” 1994.
- 9 out of 10 Michigan residents feel the state has too many billboards “Questions commissioned by Michigan United Conservation Clubs.” 1997
- 69% of Missourians believe that fewer billboards would make their states more attractive. “Statewide Public Opinion Poll on Billboards.” 1994
- 81% of residents of Houston, TX favor their existing ordinance banning new billboard construction. “Assessing Public Opinion Regarding Billboards in the Houston Area.” 1996.”

Without reviewing the questions and methods of the surveys referenced by either Scenic America or the Billboard industry, it is difficult to access their level of objectivity. It is nonetheless clear that the results persuaded many local policy makers to enact laws banning or significantly limiting billboards. That may be the best expression of public opinion – at least local opinion - on the matter of billboard aesthetics.

Few large cities have taken a more firm position against billboards than Houston Texas, which is striking because Houston is the only major U.S. City with no zoning codes. Yet this “no-zones-about-it” pro-development city has expressed a “no bones about it” stance on eliminating billboards. Houston’s business community declared that “a city with trees and landscaping which bloom without being blocked by billboards was a more appealing place in which to do business than a city in which forests of billboards dotted the so-called landscape.” Houston recently won a long-running battle at the U.S. Supreme Court level to eliminate 59 billboards that had been installed without permits and in violation of the City’s billboard ban. City mayor, Annise Parker commented, “This is another major victory in the long-running battle to reduce visual blight. Sign control, an attractive urban streetscape and green space equal a formula designed not only to insure the quality of life for Houstonians but a recipe for economic success.”⁹

This has not been so easy for some cities, especially in those states where the billboard industry has successfully lobbied State legislatures to strip towns and cities of power to regulate billboards at the local level. That is currently the concern of Salt Lake City Mayor, Ralph Becker, who fears that state legislators (of whom only 4 out of 104 did not accept campaign financing from Utah-based Reagan Sign Company) may step in to further protect the billboard industry in the response to current City efforts to address the onslaught of digital billboards. This issue was recently addressed in an article published in *The Deseret News* titled, “*Good for business or bad for scenery? Salt Lake City renews battle with billboard industry*”¹⁰ The article highlighted the current debate over

⁹ Dennis Hathaway, “Are Billboards Good for Business? For One Major U.S. City, the Answer is An Emphatic NO”. <http://banbillboardblight.org>; October 24, 2010,

¹⁰ Page, J. (2013, April 13). *Good for Business or bad for scenery? “Salt Lake City renews battle with billboard industry. The Deseret News*, Retrieved from <http://www.deseretnews.com/article/865554037/Good-for-business-or-bad-for-scenery-Salt-Lake-City-renews-battle-with-billboard-industry.html?pg=all>

Salt Lake's efforts to regulate or ban electronic billboards. It is significant that in this highly conservative pro-business state, blog respondents came out 10 to 1 against the industry, claiming that Salt Lake City's otherwise beautiful setting has been marred by an onslaught of billboards. Equally telling is the response of a pro-business member of the Salt Lake City Council who stated, "A vote for billboards isn't necessarily a vote for business". He said, "My personal opinion is that business is good, but not all business is good. I'm not a fan of billboards".¹¹

Another city typically friendly to billboards but now in a billboard battle is Los Angeles, California. LA residents were outraged by recent conversions of static billboards to electronic billboards, claiming that the bright illumination of the ads created blight and reflected into their yards and homes. 100 billboards were allowed to be converted to digital when the city agreed to an illegal settlement with CBS and Clear Channel outdoor advertising in 2006. That deal was contrary to a municipal ordinance prohibiting "alterations or enlargement" of such signs. A Los Angeles Superior Court Judge ruled the permits invalid and ordered 77 of the signs to go dark. The California Supreme Court declined to hear the case, effectively ending the billboard companies' legal options and ending the city's 5-year legal battle over the signs.

Economic Impact of Billboards:

Economic Development & Property Value

The visual impact of billboards is not purely an aesthetic concern. As the examples above indicate, many communities have found that aesthetics are integrally linked to the economic wellbeing of the community and that billboards are at odds with these objectives. So as Vermont, Alaska, Hawaii and Maine have determined that their scenic landscapes drive their tourism economies; it is not surprising that resort communities across the nation have likewise banned billboards. Examples include Aspen, Vail and Boulder, Colorado; Park City, Utah; Martha's Vineyard, Massachusetts; Jackson Hole, Wyoming; Sun Valley, Idaho, as well as Palm Springs, California. Visitors to the "Palm Springs of Washington" might therefore be surprised to be welcomed through billboard medium.

But the attested benefit of banning billboards goes beyond tourism objectives. Madeleine Appel, deputy director of the Houston city controller's office commented, "The business community seems to have bought into the scenic community's belief that one of the things that makes Houston a good place to live, work and create businesses is the aesthetic environment-which, in part, means less billboard clutter and more green".¹² Clark Martinson, general manager of Houston's Energy Corridor



¹¹ ibid

¹² ibid

District said, “The 1980 ban on new billboards and the resulting significant reduction in billboard numbers, through redevelopment and attrition, has had no negative effects on economic development and property values in Houston.”¹³

Support for Houston’s ban comes from two of the city’s largest developers – Gerald Hines and Kenneth Schnitzer. In 1984 Schnitzer sent 500 letters to civic and trade organizations trying to raise support for legislation aimed at “visual pollution” in Houston. Schnitzer is on the advisory board of Billboards Limited, a local anti-billboard group. “Damn it, we’ve got to clean this city up,” Schnitzer once said in explaining why he supports such controls.

Clearly, economies have not folded in Houston or other cities and states that have enacted tough billboard laws. But that is only one side of the coin. We should also consider whether billboards can in fact enhance the economies of cities that allow them. Most studies have focused on the economic gain to properties on which billboards are placed. But until recently, few studies have examined the impacts on properties within the vicinity of billboards, or the broader relationship between billboard controls and the economic condition of cities within the United States. These relationships were more recently addressed in a study conducted by Jonathan Snyder out of Philadelphia, Pennsylvania. Snyder published his study in a paper titled, “Beyond Aesthetics: How Billboards Affect Economic Prosperity”.¹⁴ Snyder’s study focused on 20 major US cities, including those with non-strict billboard controls, and those with strict billboard controls. He found that (1) The median income for strict control cities is higher than that for not-strict cities; (2) The mean poverty rate for cities with stricter sign control is lower than for cities without strict sign controls; and (3) The mean home vacancy rate is lower for strict sign control cities.

Snyder also studied the impact that billboards have on Philadelphia properties within the vicinity of billboards. He found that properties located within 500 feet of a billboard have a decreased real estate value of \$30,826. Homes located further than 500 feet but within a census tract/community where billboards are present experience a decrease of \$947 for every billboard in that census tract. His essential finding for Philadelphia was that billboards have negative financial and economic impacts.

A specific example of billboard interests thwarting economic development activities comes again from Salt Lake City, where city officials have been battling billboard corporations in Salt Lake’s redevelopment efforts. Salt Lake passed a nine-month moratorium on billboards last April. The follow excerpt is from an article published in High Country News based upon an interview with Salt Lake’s senior land use planner Doug Dansie. The author writes:

“On busy 600 South, a primary gateway from I-15 into downtown . . . Reagan Outdoor Advertising has a large billboard next to one of the newer motels, a

¹³ Hathaway, IBID

¹⁴ Jonathan Snyder, Beyond Aesthetics: How Billboards Affect Economic Prosperity, December 2011, Funded by the Samuel S. Fels Fund.

Marriott Springhill Suites. When the city approved the motel, Reagan Outdoor complained that the motel's sign would block its billboard and wanted permission to raise its billboard to be 85 feet tall. The city decided instead to have the motel change the location of its sign. Then Reagan complained that the light poles in the motel parking lot blocked views of the billboard and reportedly wanted more than \$1 million in compensation. (That dispute is still unresolved.) On his downtown billboards tour, Dansie points to another billboard site where, he says, zoning laws permit a 375-foot-tall office building. The combination of a billboard easement and the law against blocking views of billboards is keeping that lot occupied only by a one-story strip mall, however. Other downtown billboards are similar obstacles to downtown renewal, Dansie says: "The reality is, the outdoor advertising industry is suppressing development."¹⁵

Industry responses to such complaints are mostly formulaic. To its own hypothetical question, "What is the impact of billboards on the economy?" the outdoor advertising industry gave its familiar 70%-local-business doomsday response to its Los Angeles readers, claiming,

"More than 70 percent of billboard advertisers are local businesses, and in Los Angeles, there are more than 6,000 businesses using billboards. These businesses employ over 175,000 people. Outdoor advertising is highly effective at increasing sales. Recent studies have shown that businesses that use billboards would lose up to 20 percent of their business without access to billboards. (Taylor & Franke, *Journal of Advertising Research* (2003), Cambridge University Press)."¹⁶

The above response seems to contradict other available figures on this topic. The Outdoor Advertising Association of America (OAAA) has purportedly stated that the top three companies advertising on billboards as of 2009 were McDonald's, Verizon Long Distance, and Pepsi, with a large number of wireless phone companies, movie companies, car manufacturers and banks also being high on the list.¹⁷ Though the source of that information is not confirmed, it more closely reflects Yakima's billboard inventory figures showing that nearly 70% of billboard ads in Yakima are for *non-local* businesses, which is exactly the opposite of industry claims.

Taxation of Billboards:

A final issue regarding billboard economics is the method by which billboards are taxed. In terms of tax revenue, billboards are considered personal property in Washington State for purposes of property taxation. The industry's justification of this, which apparently was persuasive to lawmakers, is that billboards do not belong to the underlying property owner. The land is simply being leased and the billboard can be removed and used elsewhere. This departs significantly from taxation laws on other structures permanently

¹⁵ Ray Ring, High Country News, Bozeman Montana, Billboard Companies Use Money and Influence to Override Your Vote, January 23, 2012

¹⁶ The Sign of The Times.org, FAQ's, Los Angeles Billboards, Q: What is the Impact of Billboards on the Economy?"

¹⁷ Wikipedia, Billboards (non-referenced source)

affixed to the ground. For example, McDonald's will be leasing the underlying land for its planned restaurant in downtown Yakima, but will actually own the structure. Under the Billboard Industry's rationale, the McDonald's building should be considered personal rather than real property, since it is just as possible to relocate a building as it is to relocate a billboard (and perhaps more likely given the tenacity of the Industry to keep billboards in place!)



Bonnie Brae Mansion Relocation, South Carolina.¹⁸

While it's possible to relocate many types of structures, billboards are one of the few structure types with engineered footings and foundations that are not included in the improvement

value of land. This provides great advantage to billboard owners over the owners of other permanently affixed structures, particularly since it is the location – especially prime locations of high visibility – that gives value to billboards. But what is both ironic and damaging to local government is that prevailing law often requires them to be valued as real property for eminent domain purposes. Under the provisions of the American Highway Beautification Act (discussed below), this has had dramatic and dire effects on jurisdictions that wish to redevelop commercial areas or otherwise enhance their built environment.

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The American Highway Beautification Act (HBA)

Problems associated with billboards and local redevelopment efforts have their roots in the American Highway Beautification Act (HBA). This law in particular should concern the City of Yakima as it plans to beautify through landscaping and other improvements its entry corridors near federal-aid highways. The act in its current state effectively punished local government for attempting to beautify areas near billboards that the City may have previously approved. The City should therefore carefully consider whether it wants to allow new billboards in areas that are subject to the protection of the act.

President Lyndon Johnson signed the Highway Beautification Act into law in 1965. Its intent was to protect the natural and scenic beauty of federal-aid highways by controlling billboards along rural, scenic and agricultural areas. The objectives of the act included elimination of existing billboards in rural areas by 1970, and prevention of further spread. However, through subsequent amendments championed by the billboard industry, the bill has become a principle driver of billboard proliferation. It has effectively eliminated traditional police power measures local governments once had to control billboards along

¹⁸ Picture source, Expert House Movers (EHM) <http://www.experthousemovers.com/bonnie-brae-mansion-relocated-for-commercial-expansion/>

highways that run through their own jurisdiction. Specifically, it prohibits amortization as a means of compensation to remove billboards within 660 feet of federal-aid highways. It instead requires local government to resort to eminent domain measures and forces full cash compensation for their removal. But even more crippling to local government is that compensation is not just for the value of the structure itself; it is for the value of the projected revenue the billboard would produce, and can further extend to the value of other billboards that may in some way be associated with the billboard being removed.

Such measures have abruptly halted the initial intent of the HBA to remove highway billboards, and have instead created a safe haven for the industry. As one commenter noted, "By 1982, so completely had the industry turned the Highway Beautification Act to its benefit that Vermont's Senator Robert Stafford (R-Vt.), one of the most tenacious of the billboard reformers, bitterly observed the law would be more aptly labeled the *Billboard Compensation and Protection Act*, and sought to repeal the 1965 law. Ironically, only the billboard industry sought to keep the law regulating signs on and near federal highways."¹⁹ This eventual redefinition of the HBA in favor of the billboard industry would likely be no surprise to Lyndon Johnson who, in a recorded 1968 phone conversation with then-U.S. Representative and future Speaker Jim Wright, let loose on the issue with his legendary bluntness. Legislation to strengthen the Highway Beautification Act, he asserted, was being blocked by "this damned billboard industry" – "selfish, eager hogs that won't even let folks sit down and reason with them."

This redefinition of the HBA has empowered the billboard industry with a two-edge sword. With one edge, it allows the industry to capitalize on public investment in highways; the other edge effectively renders local government powerless to clean up and redevelop public highways, as though the highways were purchased by and for the billboard industry. The industry's rationale for this is that billboards represent the use of private property abutting the highways. Yet the courts have continually affirmed that the billboard business is a use of the public's investment in roadways rather than a use of private property. Appendix A provides views from the courts in four landmark rulings that underscore their position that the "enhanced value" of billboards "was created by the State in the construction of the roads and not by the signs' owners."²⁰

One area where the industry has been particularly effective at weakening the HBA through loose interpretation of its provisions is in the area of digital billboards. As originally and currently worded, the HBA requires that billboard messages be static. However, in 2007 the industry was successful in getting the Federal Highway Administration to interpret "static" to mean a message changing no more frequently than once every 4 seconds. This has given the green light to digital billboards in spite of HBA's prohibition of non-static billboards. It has also exacerbated concerns over aesthetic impacts of billboards. Critics who have referred to billboards as "litter on a

¹⁹ Philip M. Stern, *The Best Congress Money Can Buy*, at page 48 (Pantheon Books 1988).

²⁰ *Modjeska Sign Studios, Inc. v. Berle*, 55 A.D. 2d340 (1977).

stick” now also refer to them as “televisions on a stick” or “drive-by theaters”. The digital conversion trend has also heightened concerns regarding the safety aspect of billboards. Critics marvel that so much attention is paid to the hazards of texting while driving, while the hazards of watching television while driving have been deemed “inconclusive” by the FHA.

Industry Lobbyists Focus on State Legislatures, Including Washington.

In addition to industry efforts to both loosen and keep intact the HBA at the federal level, it has lobbied heavily at the state level for similar allowances in and protection from communities that might otherwise impose stricter billboard standards. In many cases, cities and towns have been shielded from the onslaught of billboards along their highways because of more stringent standards at the state level. The industry is working hard to change this. In its push to convert static billboards to electronic billboards, the industry recently proposed legislation that would nullify Washington State’s Scenic Vistas Act by allowing advertizing-driven digital billboards on state highways and scenic byways. This was proposed in 2012 and failed, and was considered again in 2013 under Senate Bill SB 5304 and House Bill HB 1408. The matter was also being considered by the Senate Transportation Committee to enter into an agreement to sell advertising space to the industry. The “lure” put out by the billboard industry was a promise to post emergency messaging such as Amber alerts in exchange for continuous commercial messaging along State highways and scenic byways.

But what was different in the industry’s 2013 proposal is that it would purportedly allow local governments to enact their own restrictions on digital billboards should the State finally concede to them. That might have sounded like good news to local governments, but some saw it as a “divide and conquer” approach by the industry. Without the support and protection of the State, cities and towns would be on their own to defend what regulations they might dare to enact locally. And given the industry’s propensity to sue any jurisdiction attempting to enact restrictions opposed by the industry, local regulation is the best the industry could hope for. The billboard industry has clearly shown it has no qualms about filing law suits virtually every time a city enacts legislation to limit industry practices. And the fact that the courts almost always rule in favor of those cities willing to fight the lawsuit doesn’t deter the industry from stretching its lucrative muscles. The unfortunate fact is that many cash-strapped cities simply don’t have the financial resources and/or the staff expertise to fight the lawsuits, and they simply give in to industry threats.

It was concerns such as this that caused industry efforts with the Washington State legislature to fail again in 2013, but given the industry’s tenacity and continued push at all state levels, the issue will almost certainly be again before the Legislature in 2014.

Driver's Safety

The final aspect to be considered with billboards pertains to driver safety. If one were to “Google” the question, “do billboards cause accidents?”, a number of articles will appear with headlines stating that there is no statistically significant correlation between billboards and crashes. The sheer number of such headlines would make one think that the question of safety is settled and closed. The catch is that virtually every study referenced by these articles has been commissioned by or associated with the Outdoor Advertising Association of America (OAAA) and many contend that the studies are self-serving and biased. Moreover, most of the headlined articles point back to the same two oft-referenced studies, including:

“A Study of the Relationship between Digital Billboards and Traffic Safety in Cuyahoga County, Ohio,”²¹, and

“Driving Performance and Digital Billboards: Final Report,”²²

While hailed by industry supporters, the studies have been criticized for being commissioned for self-serving reasons and for lacking proper peer review. The Maryland State Highway Administration (MDSHA) therefore commissioned independent peer review of each of the two studies. The review was conducted by Jerry Wachtel, CPE, President of The Veridian Group, Inc. out of Berkeley, California. His findings were released in his study title, “A Critical, Comprehensive Review of Two Studies Recently Released by the Outdoor Advertising Association of America”. His findings were not flattering to either study. He stated,

“Since neither of these two studies had received public peer review at the time of their issuance, it was premature, at best, for the OAAA to make any claims of the validity of the findings. Also, since the accident study did not compare accidents in the presence of EBBs [electronic billboards] to accidents in their absence, the study presented no evidence, no less conclusive evidence, to justify the OAAA’s claim. In addition, since even a cursory inspection of the human factors study showed that driver performance and behavior did, in fact, deteriorate when EBBs were present vs. when they were absent, the OAAA claims seem difficult to support. Finally, the OAAA’s claim that it’s Foundation for Outdoor Advertising Research and Education (FOARE) commissioned these studies to specifically examine whether there exists “a cause and effect link between outdoor digital billboards and driver behavior” demands scrutiny since the research methods and statistical analyses employed in these two studies were incapable of determining causality.”

²¹ Study by Albert Martin Tantala, Sr., and Michael Walter Tantala, Tantala Associates, Submitted to: The Foundation for Outdoor Advertising Research and Education, July 7, 2007”

²² Study by Suzanne E. Lee, Melinda J. McElheny and Ronald Gibbons, Virginia Tech Transportation Institute Center for Automotive Safety Research, Prepared for: Foundation for Outdoor Advertising Research and Education, March 22, 2007.”

Wachtel continues, “Because of the public relations campaign with which the OAAA released and publicized these two studies, they have received wide press coverage in print, online, and in the broadcast media. Without exception, this coverage has presented uncritical acceptance of these two reports as presented, with no scrutiny of their scientific or technical soundness. As a result, numerous States and local government agencies have begun to modify their codes and ordinances that address the use of digital billboards along the roadside. Having completed this peer review, it is our opinion that acceptance of these reports as valid is inappropriate and unsupported by scientific data, and that ordinance or code changes based on their findings is ill advised. Even the Federal Highway Administration (FHWA) has issued a recent policy memorandum in which DBBs are given tacit acceptance under certain conditions, possibly based in part on the release of these two studies. Because FHWA remains concerned about the safety implications of EBBs on highways, and because of its stated intention to conduct or sponsor its own research into this issue, it seems to this writer logical that any such policy change await further developments from research.”

The Federal Highway Administration has been in the process of studying the safety aspect of digital billboards since at least 2007. During that time, the Administration continued to state that further study was needed. The study has now been completed, but has not been released for public review. Some critics argue that FHA’s non-committal stance on this issue reflects what some consider a cozy relationship between the industry and the FHA. That may be particularly evident if the FHA is relying upon the OAAA’s studies to support changes to allow digital billboards as Jerry Wachtel suggests. As the Administration looks for ways to enhance its operating budget, billboards may indeed become an integral part of highway infrastructure in America.

Given the questionable stance of FHA on this issue, it is helpful to consider the results of other studies both in the US and abroad that have provided more definitive conclusions. A 1994 study done by the Wisconsin Department of Transportation, for example, evaluated the impact of an electronic sign in Milwaukee along I-94. The study concluded that “It is obvious that the variable message sign has had an effect on traffic, most notably in the increase of the side swipe crash rate.”

A more comprehensive study published in the journal *Traffic Injury Prevention* was commissioned by the Swedish Transportation Administration. The study was carried out by a team of German and Swedish researchers, who found that digital billboards keep drivers attention off the road for more than two seconds. The study confirmed what might otherwise seem intuitive – that the curiosity factor of drivers keeps them gazing at digital signs for longer periods of time as they attempt to read the ever-changing messages. The Swedish study built upon a well regarded 2006 Virginia Tech study commissioned by NHTSA²³, which found that glances totaling more than 2 seconds for any purpose increases near-crash/crash risks by at least two times. The study further found that nearly 80 percent of crashes involve driver inattention within 3 seconds of the crash.

²³ The Impact of Driver Inattention on Near-Crash/Crash Risk, An Analysis Using the 100-Car Naturalistic Driving Study Data, National Highway Traffic Safety Administration, April 2006

Finally, it also confirmed what a study commissioned by the Foundation for Outdoor Advertising Research and Education found – that digital billboards seem to attract more attention than static billboards. The FOARE study would not conclude any correlation between digital signs and more accidents, but the Swedish study provided that confirmation. So compelling was the Swedish study that the Swedish government ordered all digital signs to be removed.

Digital billboards in Yakima illustrate the problem of extended gaze by the number of messages that some signs entice drivers to read. A sign located on the southeast corner of South 1st Street and Nob Hill Boulevard, for example, contains 8 changing messages. A sign at the corner of South 1st Street and Arlington Street contains 9 messages, and a sign off Valley Mall Boulevard near Fiber Road contains an impressive 13 changing messages!

It has taken the sequential findings of multiple studies to derive at the conclusion that billboards create unsafe visual distractions. Each study appears to share common facts that derive at intermediate conclusions regarding driver gaze habits. But it appears that the author or commissioner of a given study has too easily dictated any final conclusions over whether extended gazes result in more crashes (also as Jerry Wachtel suggests) The Swedish study finally reached the conclusion that gazing at billboards in fact results in more crashes. But the results should not be surprising. One might offer the familiar adage, “This isn’t rocket science” when considering whether it’s a good idea to entice people to watch video screens rather than the road while driving a vehicle.

That was precisely the point of the California Supreme Court in its landmark *Metromedia* decision upholding San Diego’s billboard restrictions:

"No matter what one's position on the sign and safety issue [is] one can find the study to support it [D]espite the insights provided by statistical analyses, the case for the hazards of private signs rests largely upon common sense and the informed judgments of traffic engineers and other experts. The arguments are complex and sometimes highly technical, but on the whole, the courts are increasingly likely to conclude that regulation of private signs may be reasonably expected to enhance highway safety."²⁴

That *Metromedia* case referenced an earlier decision out of New York wherein the court declared,

“We hold as a matter of law that an ordinance which eliminates billboards designed to be viewed from streets and highways reasonably relates to traffic safety. Billboards are intended to, and undoubtedly do, divert a driver's attention from the roadway. Whether this distracting effect contributes to traffic accidents invokes an issue of continuing controversy. But as the New York Court of Appeals pointed out, "mere disagreement" as to "whether billboards or other

²⁴ (Dowds, *Private Signs and Public Interests*, in 1974 Institute on Planning, Zoning and Eminent Domain, p. 231.) Cited in *Metromedia Inc. vs. City of San Diego*.

advertising devices . . . constitute a traffic hazard . . . may not cast doubt on the statute's validity. Matters such as these are reserved for legislative judgment, and the legislative determination, here expressly announced, will not be disturbed unless manifestly unreasonable."²⁵

Considerations for Yakima

Billboards in Yakima are prevalent along its arterial corridors, particularly North & South 1st Street, Yakima Avenue, Nob Hill Boulevard and Fruitvale Boulevard. They are also common in Yakima's low income neighborhoods and declining commercial/industrial areas lying east of 16th Avenue. These areas provide principle access to all other areas of the city. And from the perspective of visitors, these areas define the city because except for the 40th Avenue entrance off Highway 12, one cannot access any part of the City without traveling through these neighborhoods. That is no doubt the reason the area is so appealing to billboard interests. However, the deteriorating condition of these areas has resulted in a negative image of the City and has likely deterred major new investment. The city experiences high vacancy rates in its downtown and has a reputation of high crime rates in its east side commercial and residential neighborhoods.

The city is taking active steps to improve neighborhoods and enhance these corridors. Planned efforts include:

- A new street cross section for North 1st Street including street trees and landscaping, center island features and undergrounding of utilities.
- An overlay sign code for North 1st Street.
- Submittal of a plan to clean up Nob Hill Boulevard.
- Redevelopment of the mill site, including a focus on freeway corridor enhancements.
- A focus on code compliance of eastside neighborhoods.
- Redevelopment of the downtown

The PowerPoint presentation on the built environment demonstrated how markedly changed these areas would be if billboards and other superfluous fixtures, utility poles and illegal signs were removed. However, removal of billboards can be costly to the city, especially if they are located near federally funded highways where they enjoy the protection of the American Highway Beautification Act (HBA).

The HBA will adversely affect the city's ability to beautify its highway corridors because it allows removal of trees and other enhancing vegetation that would otherwise block visibility of billboards. For example, the act prohibits the City from installing any landscaping that would block from either side the view of the billboard located at the

²⁵ (New York State Thruway Auth. v. Ashley Motor Ct. (1961) 10 N.Y.2d 151, 218 N.Y.S.2d 640, 176 N.E.2d 566.)

city's entrance on North 1st Street. Such roadblocks to community renewal efforts will be exacerbated as new billboards are allowed along or near Yakima's highway corridors.

Billboards are a lucrative business, and the industry will no doubt fight to both retain and digitize its existing billboards in the City. The industry will also continue expanding its product in Yakima under current codes. However, based upon the above analysis, we find that billboards:

1. Adversely affect property values.
2. Provide virtually no property tax revenue.
3. Do not enhance the local economy (70% of businesses promoted on billboard ads in Yakima are non-local businesses).
4. Proliferate in low income and declining neighborhoods.
5. Promote in low income neighborhoods addictive products like alcohol and gambling (Virtually all of these ads are located in Yakima's low income neighborhoods).
6. Suppress economic development.
7. Inhibit streetscape enhancement and allow for removal of streetscape landscaping.
8. Are directly linked to increased traffic accidents
9. Benefit primarily out-of-state industries (Clear Channel Advertising is based in San Antonio Texas, Lamar Outdoor Advertising is based in Baton Rouge Louisiana, and CBS Outdoor Advertising is headquartered in New York, New York).
10. Are banned in nearly every larger eastern Washington city including, but not limited to, Union Gap, Kennewick, Richland, Pasco, Wenatchee, Walla Walla, Spokane, Spokane Valley, and Moses Lake.

It is therefore prudent for the City Council to consider the following options:

Option 1 - Amend the zoning code to prohibit new billboards, including new digital billboards. This would include conversion of existing billboards.

Option 2 – Same as Option 1, but also include an amortization clause to eliminate existing billboards that are not subject to the HBA.

Option 3 – Amend the zoning code to further restrict the height, size, and/or spacing of billboards. A restricted size might be 96 square feet, and 30 feet high, and a 1,000 foot spacing requirement between any billboards.

Option 4 – Amend the zoning code to limit billboards to industrial zones and to prohibit billboards within 660 feet of federally funded highways.

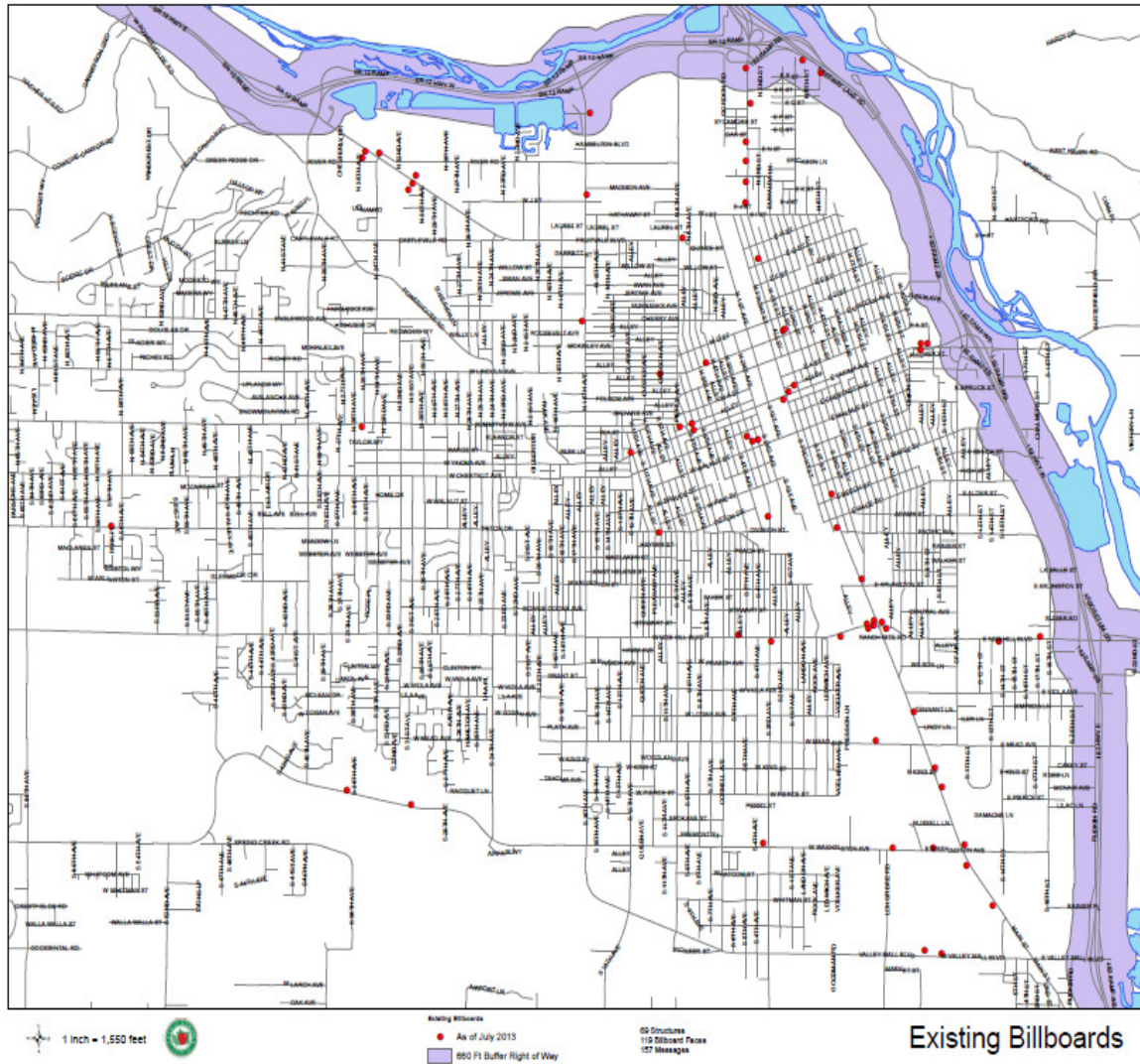
Option 5 – Any combination of Options 1 through 4.

As noted above, Yakima is one of the few cities in eastern Washington that yet allows billboards. Given that Yakima is taking active steps to improve its market position with

other cities, and recognizing the positive experiences of cities across that nation that have enacted prohibitions on billboards, staff believes that Option 1 or 2 would put Yakima's competitive marketing edge on par with other cities in the region.

Appendix “A”

Billboard locations in Yakima



Appendix “B”

View from the Courts

- Billboard Usage of Public Highways -

1. “The success of billboard advertising depends not so much upon the use of private property as it does upon the use of the channels of travel used by the general public. Suppose that the owner of private property, who so vigorously objects to the restriction of this form of advertising, should require the advertiser to paste his posters upon the billboards so that they would face the interior of the property instead of the exterior. Billboard advertising would die a natural death if this were done, and its real dependency not upon the unrestricted use of private property but upon the unrestricted use of the public highways is at once apparent. Ostensibly located on private property, the real and sole value of the billboard is its proximity to the public thoroughfares.”²⁶
2. “The [outdoor advertising business] depends entirely for its success upon the occupation of places along the sides of highways and near parks and similar public places. Billboards are designed to compel attention. The advertising matter displayed upon them in words, pictures, or devices is conspicuous, obtrusive and ostentatious, being designed to intrude forcefully and persistently upon the observation and attention of all who come within the range of clear normal vision. The only real value of a sign or billboard lies in its proximity to the public thoroughfares within public view. In this respect the plaintiffs are not exercising a natural right; they are seizing for private benefit an opportunity created for quite a different purpose by the expenditure of public money in the construction of public ways and the acquisition and improvement of public parks and reservations.”²⁷
3. “Most of the respondents’ arguments relating to their “use” of the land upon which their signs are located are mere exercises in sophistry, for in no real sense are the signs “used” upon the land on which they are located. . . [T]he signs are used in a realistic sense only where the light reflected therefrom strikes the eye of the users of the public streets or adjoining private property.”²⁸
4. “Billboards and advertising signs are of little value and small use unless great highways bring the traveling public within view of them, and their enhanced value when they are seen by a large number of people was created by the State in the construction of the roads and not by the signs’ owners.”²⁹

²⁶ Churchill v. Rafferty, 32 Phil. Rpt. 580, 609, (Phil. 1915), appeal dismissed, 248 U.S. 591 (1918).

²⁷ General Outdoor Advertizing. Co. v. Department of Public Works, 193 N.E. 799 (Mass. 1935), appeal dismissed, 297 U.S. 725 (1936).

²⁸ Metromedia, Inc. v. City of Pasadena, 216 Cal. App. 2d270 (1963).

²⁹ Modjeska Sign Studios, Inc. v. Berle, 55 A.D. 2d340 (1977).